

**MINUTES OF THE
WATER ISSUES TASK FORCE**

Thursday, November 16, 2006 – 9:00 a.m. – Room W125 House Building

Members Present:

Sen. Peter C. Knudson, Senate Chair
Rep. David Ure, House Chair
Sen. Patrice Arent
Sen. Mike Dmitrich
Sen. Dennis E. Stowell
Rep. David N. Cox
Rep. Ben C. Ferry
Rep. James R. Gowans
Rep. Brad King
Rep. Michael T. Morley
Rep. Patrick L. Painter

Members Absent:

Rep. Margaret Dayton

Staff Present:

Mr. J Brian Allred, Policy Analyst
Mr. Mark Steinagel, Policy Analyst
Mr. Chris Parker, Associate General Counsel
Ms. Emily Brown, Associate General Counsel
Ms. Joy Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Task Force Business

Chair Knudson called the meeting to order at 9:15 a.m. He introduced Sen. Dennis E. Stowell who replaced Sen. Hatch. Rep. Dayton was excused from the meeting.

MOTION: Sen. Arent moved to approve the minutes of the November 2, 2006 meeting. The motion passed unanimously. Rep. Morley was absent for the vote.

Chair Knudson turned the chair over to Rep. Ure.

2. Instream Flow to Preserve Water Quality

Ms. Brown discussed 2007 General Session draft legislation, "Instream Flow to Preserve Water Quality (Option A)" and "Instream Flow to Preserve Water Quality (Option B)". She explained that Option A contains technical changes made since the last meeting. In Option B language was taken out that discussed when the Water Quality board would have to certify a temporary change application.

Mr. Jerry Olds, State Engineer, requested that the Task Force amend Option A on lines 539 and 540 and Option B on line 592 by deleting "certified" and "electronic."

MOTION: Rep. King moved to adopt the proposed change. The change should be made to all three instream flow bills. The motion passed unanimously. Rep. Morley was absent for the vote.

Mr. Jim Garside, Big Ditch Irrigation Company, expressed his support for the instream flow bills provided that it constitutes beneficial use for the parties moving the water into instream flows.

Mr. Olds explained that when a change application is filed for instream flow use, it will be listed on the application as instream flow along with a description of the stream reach being affected and the purpose for the water.

Mr. Fred Finlinson, Coalition (Utah Water Coalition), distributed a memorandum outlining recommendations regarding the legislation. He indicated that the Coalition supports Option A. He said that Option B does not adequately address the issues facing publicly owned treatment works.

Mr. Jerry Kinghorn, Parsons Kinghorn Harris, spoke in support of Option A as a an important way to make economic use of the waters to maintain reasonable and responsible wastewater treatment.

Mr. Carly Burton, Utah Water Users Association, indicated there are still many unanswered questions as to whether or not the proposed instream flow bills will affect upstream or downstream water users. He said the association is content with the current law and does not support any of the instream flow bills.

Mr. Randy Crozier, Duchesne County Water Conservancy District, questioned whether better ways could be established to address instream flows such as temporary fixed time permits.

Mr. Warren Peterson, Member, Bureau (Utah Farm Bureau), described the Bureau's existing policy regarding instream flow water rights. He pointed out that the Bureau's public policy process regarding instream flow is currently underway.

MOTION: Rep. Cox moved to adopt "Instream Flow to Preserve Water Quality (Option A)" as a task force bill.

SUBSTITUTE MOTION: Sen. Knudson moved to adopt "Instream Flow to Preserve Water Quality (Option B)" as a task force bill. The motion passed with Sen. Arent, Rep. Cox, Rep. King, and Rep. Painter voting in opposition. Sen. Dmitrich and Rep. Morley were absent for the vote.

3. Instream Flow to Protect Trout Habitat

Ms. Brown discussed the changes that had been made to 2007 General Session draft legislation, "Instream Flow to Protect Trout Habitat," since the last meeting. She pointed out that an amendment proposed by Rep. Ure was included in the mailing packet.

MOTION: Sen. Knudson moved to adopt the amendment proposed by Rep. Ure. The motion passed unanimously. Sen. Dmitrich and Rep. Morley were absent for the vote.

MOTION: Rep. Ferry moved to adopt the amendment he distributed to the Task Force. He requested that the following change also be included: on line 367, after "perfected" insert "consumptive."

It was requested that the motion be divided.

The Task Force voted on the request to insert "consumptive." The motion passed unanimously. Sen. Dmitrich and Rep. Morley were absent for the vote.

The Task Force voted on the amendment distributed by Rep. Ferry. The motion passed unanimously. Sen. Dmitrich and Rep. Morley were absent for the vote.

Mr. Tim Hawkes, Trout Unlimited, distributed a memorandum including several written endorsements for the proposed bill. He also distributed a written copy of his comments. Mr. Hawkes encouraged the Task Force to adopt the bill.

Ms. Claudia Cottle, Bear Lake Watch, distributed a written copy of her comments. She said the organization works with water users and the power company to improve water accountability and minimize the impacts of the use of the natural lake as a reservoir. She expressed her support for the bill.

Mr. Paul Dremann, Blue Ribbon Fisheries Advisory Council, said they strongly support the bill. The rights of all involved have been accounted for. He said water right holders will remain whole.

Mr. Mark Danenhauer, Utah Rivers Council, said they are in favor of expanding instream flows based upon free market principles. He spoke in support of the bill as amended.

Mr. Peterson stated that water companies in the Delta area are very concerned about what happens in the streams. He noted that the cost of administering instream flows would probably fall back to the water users. Nothing in the bill addresses assessing the cost back to the lessee of the instream flow. He said they want to make sure that other water users don't bear the cost of administering the instream flow.

Mr. Walt Donaldson, Aquatics Chief, Division of Wildlife Resources, noted that most of the instream flow has come through the mitigation process. He stated the public continues to pressure them to find new ways to get water into the stream to create fishing opportunities. He spoke in support of the bill.

Mr. Mike Avant, Garkane Energy, expressed concern that the bill would force entities into providing flows for fish habitat that they would not otherwise provide. He stated current law provides a method for the state to obtain and hold instream flows for fish habitat. Garkane Energy does not support the bill but is supportive of the changes that have been made to it.

Mr. Finlinson spoke in support of the bill.

MOTION: Sen. Arent moved to adopt "Instream Flow to Protect Trout Habitat" as a task force bill. The motion passed with Rep. Ure voting in opposition. Sen. Dmitrich and Rep. Morley were absent for the vote.

MOTION Sen. Knudson moved to discuss Agenda Item 5 "Local Landscaping Ordinances." The motion passed unanimously. Sen. Dmitrich and Rep. Morley were absent for the vote.

4. Local Landscaping Ordinances

Ms. Brown outlined the changes that had been made to 2007 General Session draft legislation, "Local Landscaping Ordinances" since last discussed by the Task Force. She noted the definition of "xeriscape" has been included.

MOTION: Rep. Ferry moved to amend lines 209 and 406 as follows: after "that" insert "requires.."

Mr. Danenhauer spoke in opposition to the motion. He stressed the need to give homeowners the option to use xeriscaping.

Ms. Jodi Hoffman, Utah League of Cities and Towns, indicated xeriscaping in arid communities blends and promotes property values. In other communities full-scale xeriscaping may not be the preferred method. Ms. Hoffman stated she would like to work with the bill's sponsor and Mr. Danenhauer in order to create legislation that would be acceptable to all parties.

The Task Force voted on Rep. Ferry's motion, which passed with Sen. Arent and Rep. King voting in opposition. Sen. Dmitrich and Rep. Morley were absent for the vote.

MOTION: Sen. Knudson moved to go to the next item on the agenda. The motion passed with Sen. Arent and Rep. King voting in opposition. Sen. Dmitrich and Rep. Morley were absent for the vote.

Sen. Knudson encouraged all parties to work together to resolve the issues. Sen. Stowell requested that the Utah Association of Counties also be involved in the process.

5. Share Assessment Act

Mr. Parker discussed 2007 General Session draft legislation, "Share Assessment Act." He reviewed the provisions of the bill, which describes how shares may be assessed, provides rules for assessing shares, and allows enforcement of assessments by various methods.

Mr. Peterson pointed out that the proposed legislation is an effort to bring the Share Assessment Act up to date.

Mr. Chris Bramhall, Salt Lake City, said there are many cleanup and consistency changes in the bill. He stressed the need for flexibility in the act for companies to assess shares on an equitable basis and not necessarily an equal one.

MOTION: Rep. Ferry moved to adopt the following amendments:

On line 101 after "may" insert "also"

On lines 117 through 121, substitute the language in Subsection (3) with: "The date on which an unpaid assessment is considered delinquent shall be at least 30 days after notice of the assessment is given as provided in Section 16-4-206."

The motion passed unanimously. Sen. Dmitrich, Rep. Gowans, and Rep. King were absent for the vote.

MOTION: Rep. Ferry moved to amend line 135 as follows: delete "if" and insert "is." The motion passed unanimously. Sen. Dmitrich, Rep. Gowans, and Rep. King were absent for the vote.

MOTION: Rep. Painter moved to amend line 200 as follows: delete "Except as provided in Subsection (3)(b)," and after "of" delete "assessment" and insert "sale." The motion passed unanimously. Sen. Arent, Sen. Dmitrich, and Rep. King were absent for the vote.

Mr. Garside stated his support for the bill. He said that everyone should be under the same rules and everyone who buys a share should be treated the same.

MOTION: Rep. Gowans moved to adopt "Share Assessment Act" as a task force bill. The motion passed unanimously. Sen. Arent, Sen. Dmitrich, and Rep. King were absent for the vote.

6. Notice of Water Conveyance Easements

Mr. Peterson discussed 2007 General Session draft legislation, "Water Conveyance Easements." The bill proposes to authorize recording notices of easement for water conveyance facilities, creating an exception to the wrongful lien statute.

Mr. Garside said there is nothing defining what a prescriptive easement should be. He stated there needs to be clarification that storm drain water easements can be obtained by adverse possession. He said he is in favor of the bill, but felt it did not go far enough.

MOTION: Sen. Knudson moved to adopt "Water Conservation Easements" as a task force bill. The motion passed unanimously. Sen. Arent, Sen. Dmitrich, and Rep. King were absent for the vote.

7. Other Items / Adjourn

Chair Ure thanked members of the Task Force and staff for their efforts during the year.

MOTION: Sen. Knudson moved to adjourn. The motion passed unanimously. Sen. Arent, Sen. Dmitrich, and Rep. King were absent for the vote.

Chair Ure adjourned the meeting at 12:35 p.m.